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PIERCE PROPOSED AMENDMENT # 1

TIME/DATE PREPARED: January 31, 2011/9:50 a.m.

COMPANY: Garkane Energy Cooperative,  
Inc.

AGENDA ITEM NO.: U-14

DOCKET NO.: E-01891A-09-0377

OPEN MEETING:DATE: February 1 & 2, 2011

**Page 16, Line 22 through Page 19, Line 24:**

DELETE Findings of Fact Nos. 46-53 and INSERT new Findings of Fact:

“On four prior occasions, the Commission has found that exercising A.R.S. §§ 40-301 through 40-303 jurisdiction over foreign corporations who are engaged in interstate commerce ‘would create an impermissible burden on interstate commerce in violation of the United States Constitution.’ See Decision No. 51727 (January 16, 1981); Decision No. 52244 (June 18, 1981); Decision No. 53560 (May 18, 1983); and Decision No. 61895 (August 27, 1999). However, these decisions do not set forth any dormant Commerce Clause analysis, so it is impossible to scrutinize their underpinnings and determine whether they were appropriately decided.”

**Page 21, Line 10:**

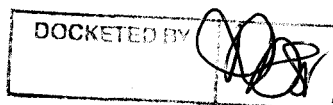
DELETE lines 10 through Page 22, line 2 and INSERT new Findings of Fact:

“The obvious potential burden to Garkane, and on interstate commerce, is the prospect of inconsistent regulation; this Commission may say no to a transaction, even if the Utah PSC may have said yes or may impose with its approval conditions that are not required by the Utah PSC. This potential burden is significant. Several state supreme courts have concluded that this burden is sufficient to overcome a public service commission’s strong local interests in regulating a foreign public service corporation’s issuance of securities. (*Panhandle E. Pipe Line Co. v. Public Util. Comm’n*, 383 N.E.2d 1163 (Ohio 1978); *Utilities Comm’n v. Southern Bell Tel. & Tel. Co.*, 217 S.E.2d 543 (N.C. 1975); *United Air Lines, Inc. v. Illinois Commerce Comm’n*, 207 N.E.2d 433 (Ill. 1965); *United Air Lines, Inc. v. Nebraska State Ry. Comm’n*, 112 N.W.2d 414 (Neb. 1961).)”

Arizona Corporation Commission

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| THIS AMENDMENT:    |                            |                       |  |
| _____ Passed _____ | Passed as amended by _____ |                       |  |
| _____ Failed _____ | _____ Not Offered _____    | _____ Withdrawn _____ |  |

DELETE Findings of Fact Nos. 59 through 68 and INSERT two new Findings of Fact:

“We do not believe the facts of this case, however, are well-suited towards supporting the exercise of Commission jurisdiction under A.R.S. §§ 40-301 through 40-303 or under A.R.S. § 40-285. There may be a case in which the public protection afforded by the exercise of such jurisdiction outweighs the burden to interstate commerce, but this is not the case. Garkane is a nonprofit rural electric cooperative and thus has less incentive to enter into questionable financial dealings for its own enrichment, and those of its investors, than would a for-profit investor-owned public service corporation. Garkane has been serving Arizona customers pursuant to its CC&N authority since 1966, has been providing electricity for more than 70 years, and is a stable company.<sup>28</sup> Garkane currently has approximately 89 percent of its customers in Utah and approximately 11 percent of its customers in Arizona. Garkane is financially sound, with a margins and equity to total assets level of approximately 36 percent.<sup>29</sup> Garkane has had no rate increases since 1998 and yet was able to provide the citizens of Colorado City a rate decrease when its CC&N was extended to include them concurrent with Garkane’s acquisition of the Twin Cities Power Authority system in 2009.<sup>30</sup> Garkane generally has a history of compliance with Commission requirements.<sup>31</sup> In addition, as noted previously, Garkane’s financial transactions are reviewed by the Utah PSC. In light of these facts, we find that the Commission’s interest in exercising its jurisdiction to regulate financial transactions under A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-285 is clearly outweighed by the onerous impact to interstate commerce. Thus, based on the currently existing facts, we conclude that it would be an impermissible burden on interstate commerce for the Commission to exercise jurisdiction over Garkane pursuant to A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-285 at this time.”

“We do not need to decide in this case whether it is *per se* an unconstitutional burden on interstate commerce, under U.S. Const. Art. I, § 8, Cl. 3, for the Commission to exercise its jurisdiction under A.R.S. §§ 40-301 through 40-303 or under A.R.S. § 40-285 as against a foreign public service corporation engaged in interstate commerce. Accordingly, we decline to do so.”

<sup>28</sup> Decision No. 70979 at 2, 13.

<sup>29</sup> *Id.* at 13.

<sup>30</sup> *Id.*

<sup>31</sup> *See id.*”

|                        |                            |                       |
|------------------------|----------------------------|-----------------------|
| <b>THIS AMENDMENT:</b> |                            |                       |
| _____ Passed _____     | Passed as amended by _____ |                       |
| _____ Failed _____     | _____ Not Offered _____    | _____ Withdrawn _____ |

**Page 31, Line 10 through Page 32, Line 10:**

DELETE Findings of Fact Nos. 69 and 70.

INSERT new Findings of Fact:

“It was reasonable for Garkane to rely on the prior Commission decisions referenced herein in deciding that it was not required to obtain Commission approval of the five transactions. Based on our finding that exercising jurisdiction over Garkane’s financial transactions under A.R.S. § 40-301 through 40-303 or under A.R.S. § 40-285 would be an impermissible burden on interstate commerce, we find that it is unnecessary for the Commission to take any action regarding the five transactions. This should not be construed as a finding that the five transactions are void under A.R.S. §§ 40-303(A) or 40-285(A).”

**Page 32, Line 16 through Page 32, Line 26:**

DELETE Conclusions of Law Nos. 3 through 5 and INSERT new Conclusions of Law:

“Garkane is a foreign public service corporation doing business in the State of Arizona and is engaged in interstate commerce.”

“Under the currently existing facts, it would be an impermissible burden on interstate commerce, under U.S. Const. Art. I, § 8, Cl. 3, for the Commission to exercise its jurisdiction under A.R.S. §§ 40-301 through 40-303 or under A.R.S. § 40-285 as against Garkane, in relation to Garkane’s future transactions for which approval would be required under those statutes.”

**Page 33, Line 6 through Page 34, Line 4:**

DELETE existing Ordering Paragraphs and INSERT new Ordering Paragraph, as follows:

“IT IS THEREFORE ORDERED that, based on the currently existing facts, at this time, Garkane Energy Cooperative, Inc. is not required to apply to the Commission for approval of each future transaction for which approval would be required under A.R.S. §§ 40-301 through 40-303 and A.R.S. § 40-285.”

Make all conforming changes.

|                        |                            |                       |
|------------------------|----------------------------|-----------------------|
| <b>THIS AMENDMENT:</b> |                            |                       |
| _____ Passed _____     | Passed as amended by _____ |                       |
| _____ Failed _____     | _____ Not Offered _____    | _____ Withdrawn _____ |